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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 308

ALVIN H. COHEN,

Respondent,

against

LOUIS BUNIN,

Petitioner.

PETITIONER'S REPLY BRIEF

SAMUEL J. COHEN,
Attorney for Petitioner.

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Respondent in his brief has chosen not to meet the basic issue presented on this application, viz.: Has the State Court jurisdiction to adjudge inventorship of a patented invention?

In a series of equivocations, both as to the facts and the law, respondent now attempts to justify the judgment by thrusting emphasis upon alleged rights flowing from contract or from breach of fiduciary relation. Neither theory finds support in the fact findings upon which the State Courts rendered judgment, nor, indeed, in the express rationale of the decision.

A. Let us examine respondent's equivocations of fact:

(1) At page 2 of his brief respondent, evidently to foster the impression that the State Courts' decision was based on contract, states that the parties "had an understanding * * * to share the fruits of their

labor". Respondent goes on to state that the "trial court found the existence of this arrangement". There then is cited a portion of the Trial Court's opinion which appears to lend support thereto. But such quotation is out of context. Respondent does not cite the following which demonstrates that contract express or implied was not the basis of the judgment:

(a) The very first sentence of the paragraph of the Court's opinion, from which the cited language is drawn: *"The plaintiff's claim of a contract does not stand up, however"* (R. 495). The Court went on to point out that the alleged agreement was too loose, indefinite, did not contemplate a patent and was in any event broken off between the parties (R. 496);

(b) The following finding of fact made by the State Trial Court and undisturbed on appeal: *"No. 15. That no contract either oral or written was entered into between the defendant and the plaintiff"* (R. 25).

To say, therefore, as respondent does at page 3 of his brief, "The state court was asked to pass on plaintiff's claimed interest in a patent based upon certain equities—viz., an arrangement to share in the patented invention on a 50-50 basis" is out of joint with the facts as incorporated in the unchanged findings of the State Court. This disposes of the claim now made that this judgment rests upon rights *ex contractu*.

(2) Respondent speaks of "wrongful" conduct by petitioner in applying for a patent (page 2 of respondent's brief) and cites a conclusion of law by the Trial Court that defendant "wrongfully applied for and obtained said patent in his own name" (page 2, respondent's brief). Again, at pages 3 and 4 of

respondent's brief, undue and misleading emphasis is placed upon the word "wrongful" in conjunction with the statement that the State Court in equity acted to correct a "fraud" upon respondent. The purpose obviously is to bolster the judgment by attempting to cast the facts into the mold of breach of fiduciary relationship. What the respondent did not cite is:

(a) The undisturbed finding of the Trial Court: "No. 51. That the plaintiff never requested the defendant to keep secret any information, ideas, or suggestions which he offered to the defendant in relation to animated puppets" (R. 32);

(b) The undisturbed finding of the Trial Court: "No. 52. That the defendant never agreed to keep secret any information, ideas, or suggestions offered to him by the plaintiff in relation to animated puppets" (R. 32);

(c) The Trial Court's statement of the sole issue presented, "the question which remains therefore is whether the court can give relief to the plaintiff on the basis of his being a joint inventor and not on the basis of contract" (R. 496).

B. Respondent's equivocations of law are exposed by his misuse of two cases as support for his position:

(1) *Becher* v. *Contoure Laboratories, Inc.*, 279 U. S. 388, is cited (page 5 of respondent's brief) as decisive in respondent's favor. What respondent does not point out is that the *Becher* case turned upon breach of trust to keep certain information secret and confidential. Here, breach of trust and contract rights do not exist. The *Becher* case is clearly authority for petitioner's position;

(2) Respondent cites *New Era Electric Range Company* v. *Sewell*, 252 N. Y. 107, as precedent favorable to him. What respondent does not perceive is that the nub of that decision was breach of an assignment between the parties. Rights *ex contractu*, we have seen, do not enter the matter before this Court.

C. Whether respondent will or not, there can be no serious doubt that neither contract nor trust forms the basis of this judgment. Only the claim of co-inventorship is here. Upon that, the State Courts are without jurisdiction.

Respectfully submitted,

SAMUEL J. COHEN,
Attorney for Petitioner.